

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, DC 20007

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

THOMAS COHEN

DIRECT LINE: (202) 342-8518

EMAIL: tcohen@kelleydrye.com

NEW YORK, NY
LOS ANGELES, CA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICE
MUMBAI, INDIA

August 14, 2013

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

**Re: Written Ex Parte Presentation
Technology Transitions Policy Task Force Seeks Comment on
Potential Trials, GN Dkt. No. 13-5
AT&T Petition to Launch a Proceeding Concerning the
TDM-to-IP Transition, GN Dkt. No. 12-353**

Dear Ms. Dortch:

In its July 8, 2013, comments filed in response to the May 10, 2013, Public Notice released in GN Docket No. 13-5,¹ XO Communications, LLC (“XO”) observed that “[m]anaged IP interconnection is far from ubiquitous at this time, in part because most ILECs [incumbent local exchange carriers] refuse to abide by interconnection obligations under Section 251 of the Communications Act of 1934, as amended (the ‘Act’), to exchange IP-based voice traffic with requesting carriers.”² Accordingly, XO reiterated that the Commission should articulate that ILECs are obligated by Sections 251 and 252 of the Act to provide managed IP interconnection to requesting carriers.

¹ See Technology Transitions Policy Task Force Public Notice Seeking Comment on Potential Trials, GN Docket No. 13-5, Public Notice, DA 13-1016 (rel. May 10, 2013) (“Task Force Notice”).

² XO Comments on the Task Force Notice at 8 (filed July 8, 2013). On page 12 of its Comments, XO added “that the ILECs have not voluntarily agreed to be bound by the obligations in Section 251 or 252 with respect to IP-based interconnection.”

Ms. Marlene H. Dortch
August 14, 2013
Page 2

In its reply comments in response to the Task Force Notice, Verizon attempted to refute XO's statement:

XO also alleges that incumbent LECs "refuse to abide by interconnection obligations." But when Verizon sent XO a letter inviting negotiations in June 2013, XO quickly responded, and Verizon and XO recently finalized a nondisclosure agreement. We have since sent XO our IP Workbook.³

Although initial steps toward potential negotiations with Verizon have recently occurred, Verizon's attempted refutation of XO's contentions falls flat as explained below. In short, XO still maintains that Verizon and other ILECs do not have proper incentives to reach reasonable arrangements governing managed IP interconnection without an appropriate regulatory backstop.

As an initial matter, the Verizon Reply Comments quoted only part of XO's statement, leaving off the portion specifying that ILECs' interconnection obligations arise under Sections 251 and 252. XO was not discussing obligations an ILEC may voluntarily assume contractually. Verizon has never, to XO's knowledge, acknowledged its statutory obligations with respect to the exchange of managed IP voice traffic with requesting carriers. Verizon's attempted refutation quoted above fails to acknowledge such obligations. Indeed, the Verizon Reply Comments as a whole deny that ILECs have any such obligations.⁴

Further, Verizon's implication that it has somehow assumed obligations to provide managed IP interconnection as a result of activities described in the Verizon Reply Comments is absurd. Shortly after the Task Force Notice was released, Verizon sent a letter to XO and a number of other carriers, inviting commercial negotiations for the exchange of managed IP voice traffic. XO contends this timing was not coincidental since it might serve to bolster Verizon's contention that negotiations for commercial agreements are underway and there is no need for Commission to intervene.

For its part, XO promptly responded to the letter demonstrating it is genuinely interested in pursuing managed IP interconnection arrangements with the ILEC. Nevertheless, XO is troubled by Verizon's effort to spin XO's good faith response into an attack on its credibility before the Commission. Further, while XO is willing to negotiate, the parties are far

³ Verizon Reply Comments on the Task Force Notice at 9 (filed Aug. 7, 2013) ("Verizon Reply Comments").

⁴ See *id.* at 13-14 (denying the existence of Sections 251 and 252 obligations applicable to managed IP interconnection).

Ms. Marlene H. Dortch
August 14, 2013
Page 3

from having fleshed out any arrangement, and XO is now cautious about becoming a pawn in Verizon's game.⁵

Moreover, the timing of Verizon's actions supports XO's and competitive providers' calls for a regulatory backstop to enforce ILEC obligations to provide managed IP interconnection, rather than the ILECs' pleas for regulatory leniency. It is the "threat" of the Commission articulating those statutory obligations in its pending proceedings that finally brought Verizon to the table. The value of a regulatory backstop could not have been demonstrated more plainly than by Verizon's behavior in the face of potential Commission action.

Given the early stage of communications between XO and Verizon, it is premature to comment on how future discussions may ultimately fare. In any event, the two parties are subject to a nondisclosure agreement. The mere execution of a nondisclosure agreement and exchange of preliminary information, which is all that is described in the Verizon Reply Comments, is a far cry from executing and implementing an interconnection agreement or even from Verizon voluntarily assuming obligations to provide managed IP interconnection, even if it chooses to deny its statutory obligations in the process.⁶ However, should future negotiations fail, it will not be because of XO's inability to recognize a reasonable set of rates, terms, and conditions. XO, as noted in its Comments on the Task Force Notice, has entered into managed IP interconnection agreements with non-ILECs, giving XO a good idea what such arrangements should look like between two essentially equal negotiating partners. If Verizon presents reasonable terms consistent with these market-based commercial agreements, a commercial agreement with the ILEC should be achievable. If future commercial negotiations stall, though, the need for the Commission to articulate the ILEC's interconnection obligations under Section 251 and 252 will be made that much more apparent.

Regardless of how any future XO-Verizon negotiations fare, however, the Commission should not delay in articulating those requirements simply because Verizon has professed a willingness to begin negotiations. The problems XO and competitors have faced in

⁵ In fact, it appears that Verizon took issue with the treatment of its letter by various carriers, regardless of the substance of their response or stage in the negotiation process. Specifically, Verizon called out those parties who had not yet responded to its letter of just a few weeks ago, those who had responded but not started negotiations and even those who were already in the process of negotiating. Verizon Reply Comments at 7-10.

⁶ Indeed, none of the carrier interactions described in the Verizon Reply Comments confirm Verizon's willingness to actually provide managed IP interconnection on reasonable rates, terms and conditions.

KELLEY DRYE & WARREN LLP

Ms. Marlene H. Dortch
August 14, 2013
Page 4

requesting and obtaining such arrangements, as reflected in the records of General Dockets Nos. 12-353 and 13-5, provide more than enough reason for the Commission to act now.

This letter is being filed in the above-referenced proceedings in accordance with the Commission's *ex parte* rules.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Thomas Cohen".

Thomas Cohen
Edward A. Yorkgitis, Jr.
Kelley Drye & Warren, LLP
3050 K Street N.W.
Washington, D.C. 20007
Telephone: (202) 342-8518

Counsel for XO Communications, LLC